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wherein the film includes an opening to contact a terminal of the battery, a contact portion to contact another terminal of the battery and the length of the film exceeds the circumference of the battery by at least the width of the battery power indicator so that when the label is wrapped around the battery, the battery power indicator is situated between two portions of the film.

21. (Amended) The label of claim 17, wherein the indicia layer includes a non-metallic pigment that produces markings and design on the label.

REMARKS

Claims 17-23 are pending in this application. By this response, claims 17 and 21 have been amended and claim 23 canceled. Favorable reconsideration of the application, as amended, is respectfully requested.

Claims 17-22 stand rejected under 35 U.S.C. 112, first paragraph. Claim 21 has also been rejected under 35 U.S.C. 112, second paragraph. Claims 17-20 have also been rejected under 35 U.S.C. 102(b) as being anticipated by U.S. Patent No. 5,760,588 to Bailey ("Bailey"). Claim 21 is rejected as being obvious over Bailey as applied to claims 17-20 and further in view of U.S. Patent No. 3,658,611 to Gray ("Gray"). Claim 22 is rejected as being obvious under 35 U.S.C. 103(a) over Bailey as applied to claims 17-20 and further in view of U.S. Patent No. 6,436,4960 to Rackovan, et al. ("Rackovan"). Applicant respectfully submits that the pending claims are now in a condition for allowance.

The office action states that Bailey discloses "the battery power indicator is situated between the two portions in the laminated film, i.e., between the film (54) and

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the base laminate (30) in the battery tester label (15)." Applicant submits that unlike claim 17, Bailey requires an additional material for use an insulator in order to protect the tester part of the label from the battery cell itself. Bailey's invention cannot be made without this additional material and does not teach claim 17. Claim 17, however, does not require this additional material. Instead, claim 17 recites a battery power indicator label in which the label itself is used as the insulating material. Thus, claim 17 eliminates the need for an additional layer of insulating material as contemplated by Bailey and the other prior art of record. Bailey does not anticipate claim 17, and applicant submits the claim is allowable.

Also, since pending claims 18-22 depend from claim 17, they necessarily include all of its limitations and like claim 17 do not require the use of Bailey's additional insulating material. Furthermore, nowhere in the prior art of record is it contemplated to eliminate the need for the additional layer. Accordingly, Bailey, alone or in combination with the other cited art, does not anticipate or render obvious these dependent claims.

Based on this, applicant respectfully submits that these references alone or in combination do not teach claim 17 or dependent claims 18-23. These claims are thus allowable, and the applicant respectfully requests withdrawal of the rejections.

CONCLUSION

Accordingly, claims 17-22 are believed to be allowable and the application is believed to be in condition for allowance. A prompt action to such end is earnestly solicited.

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Should the Examiner feel that a telephone interview would be helpful to facilitate favorable prosecution of the above-identified application, the Examiner is invited to contact the undersigned at the telephone number provided below.

Should any other petition for an extension of time and/or any other fees be necessary with the filing of this paper, petition is hereby made and the Commissioner is authorized to charge any fees (including additional claim fees) to Deposit Account No. 18-0988.

Respectfully submitted,
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CERTIFICATE OF MAILING

I hereby certify that this paper (along with any paper referred to as being attached or enclosed) is being deposited with the United States Postal Service on the date shown below with sufficient postage as first class mail in an envelope addressed to: Mail Stop Non-Fee Amendment, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450.

Date 6/27/03


Todd Tucker

APPENDIX-Amendment Version With Markings to Show Changes Made

Following are marked-up versions of amended claims 1 and 21 with added material underlined, and with removed material struck out.

1. A battery power indicator label for a dry-cell battery, comprising:
at least one transparent, shrinkable base film having a printed indicia layer, a
layer of thermochromic material, a layer of electrically conductive material and a
pressure sensitive adhesive on one side, with the layer of thermochromic material and
the layer of conductive material forming a battery power indicator;

wherein the film includes an opening to contact a terminal of the battery, a
contact portion to contact another terminal of the battery and the length of the film
exceeds the circumference of the battery by at least the width of the battery power
indicator so that when the label is wrapped around the battery, the battery power
indicator is situated between two portions of the film.

21. (Amended) The label of claim 17, wherein the indicia layer includes a non-
metallic pigment that ~~produces the effect of a metallized label produces markings and~~
design on the label.